

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF NEVADA

3 Saimalo T., Plaintiff(s),  
4 vs.5 Martin O'Malley, Commissioner of Social  
6 Security,

7 Defendant(s).

2:24-cv-01241-MDC

ORDER REMANDING CASE FOR  
FURTHER ADMINISTRATIVE  
PROCEEDINGS

9 Pro se plaintiff Saimalo T. filed a *Motion for Remand* (“Motion”) regarding the Administrative  
10 Law Judge’s (“ALJ”) final decision denying her social security benefits. *ECF No. 14*. The Court the  
11 GRANTS Motion because the ALJ’s opinion is not supported by substantial evidence. The ALJ rejected  
12 the expert opinions and instead relied on her own judgment in determining the plaintiff’s residual  
13 functional capacity.

14 **I. BACKGROUND**

15 Plaintiff filed applications for a period of disability and disability insurance benefits on August  
16 17, 2021 alleging disability commencing July 27, 2020. *AR 274-280*. The Commissioner denied the  
17 claims by initial determination on March 28, 2022. *AR 133-143*. Plaintiff requested reconsideration of  
18 the initial determination on April 1, 2022. *AR 171*. The Commissioner denied reconsideration on  
19 September 15, 2022. *AR 145-156*. Plaintiff requested a de novo hearing before an ALJ on October 4,  
20 2022. *AR 197-215*. The ALJ conducted a hearing on May 4, 2023. *AR 99-132*. The ALJ published an  
21 unfavorable decision on July 31, 2023. *AR 17-36*. Plaintiff requested that the Appeals Council review  
22 the ALJ’s decision on August 25, 2023. *AR 270-271*. The Appeals Council denied the request for review  
23 on May 9, 2024. *AR 1-6*. On that date, the ALJ’s decision became the final decision of the  
24 Commissioner. 42 U.S.C. § 405(h). The Court has jurisdiction to review the final decision of the  
25 Commissioner for substantial evidence and error of law. 42 U.S.C. §§ 405(g); 1383(c).

1       The ALJ calculated that plaintiff met the special earnings requirements for a period of disability  
2 and disability insurance benefits through December 31, 2025. *AR 20*, ¶ 1. The ALJ thereafter used the  
3 five-step sequential evaluation process to guide the decision. 20 C.F.R. § 404.1520. At step one, the ALJ  
4 agreed that plaintiff did not engage in substantial gainful activity since July 27, 2020. *AR 22*. At step  
5 two, the ALJ found that plaintiff suffered from medically determinable severe impairments consisting of  
6 degenerative disc disease of the cervical, lumbar and thoracic spine, knee osteoarthritis and obesity. *AR*  
7 22. At step three, the ALJ decided that the impairments did not meet or equal any “listed” impairment.  
8 *AR 23* (citing 20 C.F.R., Part 404, Subpart P, Appendix 1). The ALJ assessed plaintiff as retaining the  
9 residual functional capacity to perform the demands of work as follows:

10       light work as defined in 20 C.F.R. § 404.1567(b) except the claimant is capable of  
11 lifting and carrying twenty pounds occasionally and ten pounds frequently; she is  
12 capable of standing for six hours and she is capable of walking for six hours, but can  
13 total no more than six hours on her feet in a normal eight-hour workday; she can  
14 push and pull as much as she can lift and carry; she is capable of occasional  
15 overhead reaching bilaterally, but can perform frequent bilateral reaching in all  
16 directions; she can climb ramps and stairs, climb ladders, ropes, or scaffolds, kneel,  
17 crouch, and crawl occasionally, but can stoop frequently; she can occasionally work  
18 at unprotected heights and around moving machinery and mechanical parts and  
19 operate a motor vehicle; she can occasionally work in extreme cold, extreme heat  
20 and vibration.

21       *AR 24*.

22       At step four, the ALJ compared the residual functional capacity assessed to the demands of  
23 plaintiff’s past relevant work as gambling cashier DOT # 211.462-022 and a check cashier DOT #  
24 211.462-026 and decided that plaintiff could perform that kind of work. *AR 30*. The ALJ concluded that  
25 plaintiff did not suffer from a disability between July 27, 2020, and the date of the decision. *AR 31*.

2       Plaintiff brings multiple arguments: (1) there was a change in the law that should be applied to  
3 her pending case where the regulation is silent; (2) the ALJ erred in finding that plaintiff could stand and  
4 walk for six hours in an eight-hour workday in interpreting the residual functional capacity (RFC); and  
5

1 (3) the ALJ failed to provide clear and convincing reasons to reject plaintiff's testimony. *ECF No. 14.*  
2 The Commissioner argues that (1) the recent regulatory changes provide no basis for disturbing the  
3 ALJ's decision; (2) the ALJ reasonably assessed plaintiff's RFC based on the record as a whole; and (3)  
4 the ALJ reasonably discounted plaintiff's subjective symptom complaints. *ECF No. 19.*

5 **II. DISCUSSION**

6 **A. Legal Standard**

7 The Fifth Amendment prohibits the government from depriving persons of property without due  
8 process of law. U.S. Const. amend. V. Social security plaintiffs have a constitutionally protected  
9 property interest in social security benefits. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Gonzalez v.*  
10 *Sullivan*, 914 F.2d 1197, 1203 (9th Cir. 1990). Plaintiff bears the burden of showing any error was  
11 prejudicial. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). The substantial evidence threshold  
12 “is not high” and “defers to the presiding ALJ, who has seen the hearing up close.” *Biestek v. Berryhill*,  
13 587 U.S. 97, 103, 108 (2019).

14 “On judicial review, an ALJ’s factual findings [are] ‘conclusive’ if supported by ‘substantial  
15 evidence.’” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019) (quoting 42 U.S.C. § 405(g)). The  
16 substantial evidence threshold “is not high” and “defers to the presiding ALJ, who has seen the hearing  
17 up close.” *Id.* at 1154, 1157; *Ford v. Saul*, 950 F.3d 1141, 1159 (9th Cir. 2020) (quoting *Biestek*); see  
18 also *Valentine v. Astrue*, 574 F.3d 685, 690 (9th Cir. 2009) (substantial evidence “is a highly deferential  
19 standard of review”). The District Court’s review is limited. See *Treichler v. Comm'r of SSA*, 775 F.3d  
20 1090, 1093 (9th Cir. 2014) (“It is usually better to minimize the opportunity for reviewing courts to  
21 substitute their discretion for that of the agency.”) The Court examines the Commissioner’s decision to  
22 determine whether (1) the Commissioner applied the correct legal standards and (2) the decision is  
23 supported by “substantial evidence.” *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th  
24 Cir. 2004). Substantial evidence is defined as “more than a mere scintilla” of evidence. *Richardson v.*  
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1 *Perales*, 402 U.S. 389, 401 (1971).

2 The regulations provide that the ALJ must assess all the evidence, including the claimant's and  
 3 others' descriptions of the limitations, and medical reports, to determine what capacity the claimant has  
 4 for work despite his or her impairments. 20 C.F.R. § 404.1545(a)(3) and 416.945(a)(3). "The ALJ is  
 5 responsible for translating and incorporating clinical findings into a succinct RFC." *Rounds v. Comm'r*  
 6 *of Soc. Sec. Admin.* 807 F.3d 996, 1006 (9th Cir. 2015) (citing *Stubbs-Danielson v. Astrue*, 539 F.3d  
 7 1169, 1174 (9th Cir. 2008)). While the ALJ is responsible for determining the RFC, the RFC must be  
 8 supported by substantial evidence. "The ALJ must set out in the record his reasoning and the evidentiary  
 9 support for his interpretation of the medical evidence." *Tackett v. Apfel*, 180 F.3d 1094, 1102 (9th Cir.  
 10 1999) (citation omitted). "The ALJ must use some medical evidence of the claimant's ability to function  
 11 in the workplace' in order to make a proper RFC assessment; 'the ALJ may not simply draw his own  
 12 inferences about the claimant's functional ability from medical reports.'" *Gutierrez v. Kijakazi*, No. 2:21-  
 13 cv-01292-DJA, 2022 U.S. Dist. LEXIS 66403, at 9 (D. Nev. Apr. 8, 2022)(cleaned up).

14 On the other hand, the ALJ cannot reject medical reports and opinions and instead rely on her  
 15 own judgment. This Court, and courts in other circuits, have held that when an ALJ rejects the expert  
 16 opinions in the record and instead relies on her own judgment in determining a claimant's RFC, the  
 17 ALJ's decision is unsupported by substantial evidence. *See Holtan v. Kijakazi*, No. 2:22-cv-01222-VCF,  
 18 2023 U.S. Dist. LEXIS 39538, at \*6 (D. Nev. Mar. 9, 2023)(Noting that it is, "particularly concerning  
 19 because the ALJ did not rely on any of the medical opinions, finding all of the medical opinions of  
 20 record unpersuasive.")(emphasis in original); see also *Rosado v. Sec'y of Health & Human Servs.*, 807  
 21 F.2d 292, 293 (1st Cir. 1986); *Jakubiak v. Berryhill*, 337 F.Supp.3d 80 (D. Mass. 2018); *Maniscalco v.*  
 22 *Colvin*, 167 F. Supp. 3d 207, 217-18 (D. Mass. Mar. 3, 2016); *Beyene v. Astrue*, 739 F.Supp.2d 77, 83  
 23 (D. Mass. 2010). A lay person is not qualified to interpret raw medical data to determine a claimant's  
 24 RFC unless the impairments are so mild that they pose no significant functional limitations. *Manso-*  
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1 *Pizarro v. Sec'y of Health & Human Servs.*, 76 F.3d 15, 17 (1st Cir. 1996); *Rosado*, 807 F.2d at 293-94;  
2 *Jakubiak*, 337 F.Supp.3d at 85 (citation omitted); *Maniscalco*, 167 F.Supp.3d at 218-19; *Beyene*, 739  
3 F.Supp.2d at 83 (citation omitted).

4 **B. Analysis**

5 Plaintiff is a 275-pound woman, over sixty years old, that needs knee replacement surgery due to  
6 advanced osteoarthritis changes of her bilateral knees. *AR 47, 151-153, and 686*. The ALJ found that  
7 plaintiff's back pain, knee arthritis, and obesity are all severe. The ALJ concluded that plaintiff can walk  
8 and stand for six hours in an eight-hour workday. The ALJ's RFC is not supported by substantial  
9 evidence. While the ALJ summarized the medical evidence, it is not entirely clear how the ALJ then  
10 translated that evidence into an RFC. As the ALJ noted, plaintiff's medical records showed that  
11 plaintiff's health often fluctuated, improving and declining, at various times. *AR 25-27*. The ALJ found  
12 that all the medical opinions of record were unpersuasive, except for one, that she found to be only  
13 "somewhat persuasive." The ALJ's rejection of the medical opinions was not based on contradicting  
14 medical opinions but on her own, independent and subjective perspective. The ALJ, however, is not a  
15 doctor and is not qualified to offer diagnoses or to offer medical opinions as to the limitations that flow  
16 from the medical diagnoses. "The ALJ is responsible for determining credibility, resolving conflicts in  
17 medical testimony, and resolving ambiguities," however, "as a lay person, an ALJ is simply not  
18 qualified to interpret raw medical data in functional terms." *Padilla v. Astrue*, 541 F. Supp. 2d 1102,  
19 1106 (C.D. Cal. 2008) quoting *Nguyen v. Chater*, 172 F.3d 31, 35 (1st Cir.1999) (per curiam). There are  
20 no medical opinions in the record that support the ALJ's RFC assessment. The ALJ erred by assessing  
21 plaintiff's RFC without support from the medical opinion evidence.

22 **a. The ALJ Found David Silverberg, MD's Opinion to Be Somewhat Persuasive**

23 The ALJ found that the opinion of David Silverberg, MD, who treated her for her knees in  
24 December 2022, to be somewhat persuasive. The ALJ noted that Dr. Silverberg, after treating plaintiff  
25

1 with Kenalog and lidocaine injections, stated that, "Patient can weight bear as tolerated bilateral lower  
 2 extremity." *See AR 29 and 709.* The ALJ stated that Dr. Silverberg's finding, "really does not offer  
 3 much in the way of a limitation, but as simply advising the claimant after her injection, which he noted  
 4 provided immediate relief to her knee." *AR 29.* Dr. Silverberg referred plaintiff to her primary care  
 5 doctor regarding her obesity. *AR 709.* Dr. Silverberg also recommended a total knee arthroplasty, but  
 6 that she wanted to wait until after her scheduled spine surgery. *Id.* Dr. Silverberg did not treat plaintiff  
 7 for her back pain or obesity, so it is not clear how the ALJ formulated her RFC with this record that  
 8 pertained only to plaintiff's knee pain. It is also not clear what parts of Dr. Silverberg's opinion that she  
 9 found to be unpersuasive, given that she only found it to be somewhat persuasive.

10 **b. The ALJ Rejected the Other Medical Opinions**

11 The ALJ found the rest of the medical opinions to be unpersuasive. At the request of the  
 12 Administration, plaintiff attended a consultative examination performed by neurologist R. Kriby Reed,  
 13 M.D. *AR 629-633.* Dr. Reed reviewed imaging reports, performed a clinical evaluation, and examined  
 14 Ms. plaintiff. *Id.* On examination, Dr. Reed noted a normal neurological examination but noted an  
 15 antalgic gait; difficulty toe/heel walking; unable to attempt tandem walking; unable to kneel; inability to  
 16 bend at the waist to take off and put on shoes. *Id.* Dr. Reed concluded that while plaintiff did not need a  
 17 cane for neurological reasons, her physical limitations related to her weight in combination with her  
 18 knees would limit her to sedentary work. Dr. Reed opined that plaintiff could stand two hours and sit six  
 19 hours and lift up to ten pounds occasionally and less than ten pounds frequently. *AR 633-635.* The ALJ  
 20 rejected Dr. Reed's opinion stating that at the time of the examination plaintiff, "was only<sup>1</sup> getting  
 21 Kenalog and lidocaine injections and receiving refills on her medications." *AR 28.* The ALJ appears to  
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 24 <sup>1</sup> It is not clear if the ALJ is characterizing these injections as conservative treatment, given her use of  
 25 the word "only" here. *See, e.g., Gilliland v. Saul*, 821 Fed. App'x 798, 799 (9th Cir. 2020) (finding the  
 ALJ erred in characterizing treatment as conservative where the plaintiff received "several pain  
 medications and trigger point injections").

1 find, but it is unclear, that plaintiff had total relief with injections. Such a conclusion is contrary to the  
 2 medical records which show plaintiff did not have total relief. For example, Dr. Silverberg's February  
 3 2022 notes indicate that plaintiff reported two months of improvement on the left knee but only two  
 4 weeks of improvement on the right knee. *AR 692*. In December 2022, plaintiff reported five months  
 5 improvement on the left knee but at her next appointment she reported only three months of  
 6 improvements. *AR 59*. The ALJ cannot cherry-pick or isolate the record. *See Fidel R.P., v. O'Malley*,  
 7 No. 3:24-CV-02145-JSC, 2024 WL 4589204 (N.D. Cal. Oct. 28, 2024) citing *Ghanim v. Colvin*, 763  
 8 F.3d 1154, 1164 (9th Cir. 2014) (finding error when the ALJ's decision did not account for the record  
 9 "as a whole," but rather relied on "cherry picked" evidence).

10 In March 2022, the first state agency physician, Dr. Bui, agreed with Dr. Reed that plaintiff  
 11 would have significant limitations in standing and walking but opined that plaintiff could stand and walk  
 12 for four hours in an eight-hour workday and was limited to sedentary work. *AR 137-142*. Dr. Bui  
 13 characterized the cervical disc disease as "mild" based on imaging results from 2019. *AR 142*. The last  
 14 record reviewed by Dr. Bui was the March 16, 2022, consultative report by Dr. Reed. *AR 136*.

15 In September 2022, the second state agency doctor, Kerry Novak, M.D., reviewed additional  
 16 records and agreed with Dr. Reed, and limited plaintiff to standing only two hours in an eight-hour  
 17 workday. *AR 149*. In evaluating the supportability and consistency of Dr. Reed's medical opinions, Dr.  
 18 Novak noted that it was "supported by other objective evidence in the file." *AR 149*. Contemporaneous  
 19 records from Nevada Spine Clinic further revealed severe progressive cervical myeloradiculopathy.  
 20 *See Nevada Spine Clinic treatment records from June and August 2022 at AR 712, 714, and 716, see*  
 21 *also generally AR 710-720*. Updated imaging results from Nevada Spine revealed severe multilevel  
 22 stenosis with chronic indentation/compression of the spinal cord anteriorly, worse at C4/5 and C6/7 with  
 23 severe bilateral stenosis at C5/6-C6/7, and treatment notes that documented constant sharp neck pain. *AR*  
 24 *147, 644, 656, 658, 663-644, 665, 667, and 712*.

1 The records from Nevada Spine document plaintiff's concerns about surgery. *AR* 712.  
2 Orthopedist, Dr. Poelstra at Nevada Spine noted that plaintiff was both interested in cervical surgery yet  
3 concerned. *Id.* Dr. Poelstra noted that plaintiff was not improving and will need to have surgery, but she  
4 is very concerned, noting she would have to discuss surgery with her family. *Id.* Dr. William Jacks  
5 appears to have ordered an MRI of the thoracic spine, which also revealed significant findings not  
6 reviewed by Dr. Reed or Dr. Bui. These findings are of a highly technical nature (such as ligamentum  
7 flavum buckling, multiple lobulated T1 and T2 hypointense structures resulting in effacement of ventral  
8 subarachnoid space). *AR* 666. It is not clear if the ALJ evaluated any medical opinions related to this  
9 record, as the ALJ does not have the educational background and training needed to understand how to  
10 determine what sort of limitations could arise from these findings. See *Elodia H. v. O'Malley*, No. 2:24-  
11 CV-00022-MDC, 2024 WL 4235072 \*3 (D. Nev. Sept. 18, 2024) (finding a lay person is not qualified  
12 to interpret raw medical data to determine a claimant's RFC unless the impairments are so mild that they  
13 pose no significant functional limitations).

14 Dr. Novak cited to objective findings of the left knee which demonstrated moderate to severe  
15 collapse of the medial and patellofemoral compartment; osteophytes at the tibial plateau; moderate  
16 joint space narrowing at all compartments; osteophytes present in all three compartments of the knee  
17 joint consistent with moderate osteoarthritis; and fibrillation in both the medial and lateral menisci  
18 consistent with meniscus tears; with findings consistent with moderate to severe left knee deformity. *AR*  
19 151-153. On the right knee there was moderate collapse of the medial and patellofemoral compartment;  
20 osteophyte formation of the medial femoral condyle and medial tibial plateau; and findings consistent  
21 with osteoarthritis right knee deformity. *Id.*

22 The ALJ rejected this opinion because "the consultant did not discuss which treatment notes  
23 included the cane or assistive devices." *AR* 28. Whether plaintiff needed a cane or not, Dr. Novak  
24 assessed a limitation to standing and walking two hours a day consistent with Dr. Reed who found that  
25

1 while plaintiff did not need a cane, she was still limited to standing only two hours a day. *AR 634*. The  
2 ALJ rejected Dr. Novak's opinion because Dr. Novak did not consider that the claimant had yet to  
3 engage in physical therapy. *AR 28*. The Court finds that the ALJ's rejection of this opinion is vague  
4 because she does not explain the relevance or provide an analysis. On the one hand the ALJ seems to  
5 imply that (1) plaintiff was not credible because she had not yet engaged in physical therapy, therefore  
6 Dr. Novak's opinion was not supported, or (2) that when plaintiff did undergo physical therapy that she  
7 improved so much that Dr. Novak's limitation no longer applied. The Court finds that the ALJ's  
8 decision here regarding her rejection of Dr. Novak's opinion is vague.

9 The ALJ also included a vague footnote that states that, "even if the undersigned found the  
10 opinion of the reconsideration consultation to be somewhat persuasive, it would not result in a finding of  
11 disability given that the claimant could still do her past work even if limited to only [four] hours on her  
12 feet in an [eight-hour] day." *AR 28*. However, the Court notes that it was the initial state agency doctor  
13 that opined that plaintiff could stand four hours, not the reconsideration doctor. Dr. Novak, on  
14 reconsideration, who reviewed additional records and opined that plaintiff was limited to standing only  
15 two hours. *AR 149*. The ALJ's findings here are vague, so it is not clear how the ALJ formulated the  
16 RFC after she rejected all the medical opinions.

17 **c. The ALJ Appears to Have Relied on Her Own Judgment When Formulating  
18 the RFC**

19 The ALJ's error here is material. The ALJ rejected all the medical opinions in the record except  
20 one—Dr. Silverberg's opinion, who only treated plaintiff for her knees—and the ALJ only found his  
21 opinion somewhat persuasive. The ALJ appears to have relied entirely on her own judgement regarding  
22 plaintiff's severe back pain and obesity. A lay person is not qualified to interpret raw medical data to  
23 determine a claimant's RFC unless the impairments are so mild that they pose no significant functional  
24 limitations. *Manso-Pizarro v. Sec'y of Health & Human Servs.*, 76 F.3d 15, 17 (1st Cir. 1996); *Rosado*,

1 807 F.2d at 293-94; *Jakubiak*, 337 F.Supp.3d at 85 (citation omitted); *Maniscalco*, 167 F.Supp.3d at  
 2 218-19; *Beyene*, 739 F.Supp.2d at 83 (citation omitted). The ALJ's RFC is not supported by substantial  
 3 evidence. While ALJ summarized the medical evidence, it is not entirely clear how the ALJ then  
 4 translated that evidence into an RFC, considering that she did not rely on the medical opinions. The  
 5 ALJ found that the medical opinions did not support the RFC and the ALJ interpreted raw medical data.  
 6 Because it is unclear how the ALJ derived plaintiff's RFC from the record and because there are no  
 7 medical opinions supporting the RFC (other than the somewhat persuasive one regarding her knees), the  
 8 ALJ apparently relied only on the plaintiff's medical records and possibly plaintiff's testimony on  
 9 assessing the RFC. The Court finds that the ALJ's RFC is not supported by substantial evidence.

10 **d. The Vocational Evidence is Unclear Pertaining to The ALJ's Finding that  
 11 Plaintiff Can Stand and Walk for Six Hours a Day**

12 The vocational expert ("VE") testified that a person that would miss work even once a month  
 13 was unemployable. *AR 126-127*. The ALJ did not elicit testimony from the VE that plaintiff could  
 14 perform her past relevant work if she could only stand for two hours in a workday. The VE's testimony  
 15 indicates that she believed that the past work all required standing and walking more than two hours a  
 16 day. *AR 125-126*. At first the VE testified that a person that could only stand and walk for four hours  
 17 could perform the past work as a gambling cashier and check cashier. *AR 125-126*. However, on cross  
 18 examination by plaintiff's attorney as to whether, based on her experience, the jobs as generally  
 19 performed require standing most of the day, the VE appeared to agree. *AR 129*. The VE acknowledged  
 20 that the DOT classifies the job as sedentary but testified that "[n]o, she has never seen a gambling  
 21 cashier that is sitting." *AR 129*. Although evidence provided by a VE is generally expected to be  
 22 consistent with the DOT, "[n]either the DOT nor the VE ... evidence automatically 'trumps' when there  
 23 is a conflict." Social Security Ruling ("SSR") 00-4p; *Massachi v. Astrue*, 486 F.3d 1149, 1153 (9th  
 24 Cir.2007) ("when a conflict between a VE's testimony and the DOT arises, the ALJ must make an  
 25

1 inquiry with the VE and then determine whether the VE's "explanation for the conflict is reasonable and  
 2 whether a basis exists for relying on the expert rather than the [DOT]").

3 The ALJ has a duty to fully and fairly resolve conflicts. The ALJ dropped a footnote that states:

4 While the vocational expert had not seen cage cashiers in Las Vegas, she was familiar  
 5 with check cashiers, so even if she was limited to light work with being able to be on her  
 6 feet for 4 hours in an 8-hour day and the job of gambling cashier was precluded, she  
 7 could still perform the work of Check Cashier as generally performed. This would still be  
 consistent with the light exertional level as the claimant would not be significantly  
 limited below the light level.

8 *AR 31, fn7.*

9 The VE testified, however, that, "I honestly haven't observed directly anything more than the  
 10 Cashiers that would occur in Vegas casinos, and I have not visited many more casinos outside of  
 11 Vegas." *AR 129.* Counsel then asked the VE if she had seen Cage Cashiers sitting in Vegas casinos and  
 12 she answered "[n]o." *Id.* The ALJ does not resolve this conflict regarding plaintiff's past relevant work  
 13 as a gambling cashier because the expert conceded that gambling cashiers stand eight hours a day  
 14 because they do not have chairs, which is outside the ALJ's opinion that plaintiff could stand six hours.  
 15 The ALJ did not resolve the conflict regarding whether plaintiff can perform the gambling cashier work  
 16 because based on the expert's testimony if appears that that job does not allow for sitting.

17 Regarding the check cashier, the VE testified that "[i]n my experience, there is an alternation  
 18 between sitting and standing for these positions and I have seen positions where it is performed at a  
 19 seated position, back and forth between seated and standing." *AR 130.* The VE went on to confirm that  
 20 this would not even be a sit/stand at will but would be based on "the customer and slow" apparently  
 21 meaning that they could sit down when it was slow. *AR 130.* The ALJ did not address this testimony  
 22 regarding whether if it was a busy day there would be little to no sitting. None of the medical opinions in  
 23 the record stated that on a busy day plaintiff could stand more than two or four hours.

24 Where a VE's testimony appears to be self-contradictory, remand is appropriate. See *Diane B. v.*  
 25

1 *Kijakazi*, No. 21-CV-00794-TSH, 2022 WL 94915 (N.D. Cal. Jan. 10, 2022) (citing *Hamilton v.*  
 2 *Comm'r of Soc. Sec. Admin.*, 464 F. App'x 681, 682 (9th Cir. 2012) (remanding when light-work  
 3 positions described by vocational expert could not accommodate claimant's at-will sit/stand limitation  
 4 "according to the VE's own testimony"); *Hernandez v. Colvin*, 2014 WL 1800408, at \*5 (C.D. Cal. May  
 5 6, 2014) (remanding where vocational expert presented conflicting testimony, first stating that an  
 6 individual capable of only six hours of standing could perform claimant's past relevant work, then  
 7 conceding that those positions as typically performed required standing throughout an eight-hour day  
 8 except for the 50 minutes allotted for lunch and breaks); *Garcia v. Colvin*, 2015 WL 2384172, at \*13  
 9 (S.D. Cal. May 18, 2015) (remand appropriate where ALJ failed to resolve seemingly contradictory  
 10 testimony by vocational expert).

11 The Court remands the case for further development to clarify the vocational evidence regarding  
 12 both the gambling cashier work and the check cashier job. The ALJ should determine whether the new  
 13 five-year rule applies on remand, whether there is a need for additional vocational testimony, or whether  
 14 the new rule moots the need for additional vocational testimony.

15 **C. Conclusion**

16 Since the Court remands this case based on the issues of the RFC, the VE's testimony, and  
 17 whether plaintiff can stand and walk for six hours in an eight-hour workday, the Court does not reach  
 18 the issues of the symptom testimony or the change in law issue at the federal level. The Court remands  
 19 this case to obtain further evidence if needed.

20 **IT IS ORDERED that:**

- 21 1. Plaintiff Saimalo T.'s *Petition* (ECF No. 14) is GRANTED.
- 22 2. The Court REMANDS this case for further administrative proceedings, pursuant to sentence  
     23 four of 42 U.S.C. § 405(g).
- 24 3. The Clerk of Court is DIRECTED to enter final judgment VACATING the decision of the  
     25

Commissioner of Social Security and REMANDING this case for further proceedings consistent with this Order.

DATED July 22, 2025.

IT IS SO ORDERED.

Hon. Maximiliano D. Couvillier III  
United States Magistrate Judge